

THELMAN WRIGHT
GERAL BEVERIDGE

IBLA 76-311, 76-312

Decided October 4, 1976

Separate appeals from decisions of the Eastern States Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offers ES 11632 and ES 11631.

Affirmed.

1. Oil and Gas Leases: Future and Fractional Interest Leases

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a non-competitive lease simultaneous drawing, is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

APPEARANCES: Thelma Wright, pro se; Geral Beveridge, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Thelma Wright has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated September 30, 1975, rejecting her simultaneous oil and gas lease offer filed for acquired lands lease ES 11632. Appellant's offer for Parcel No. 22 in the January 1973 listing was drawn first. The offer was rejected for failure to submit a statement setting forth ownership of operating rights to the fractional oil and gas interest not owned by the United States.

Geral Beveridge has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated October 1, 1975, rejecting her simultaneous oil and gas lease ES 11631. Appellant's offer for Parcel No. 21 in the January 1973 listing was drawn first. The offer was also rejected for failure to submit a statement setting forth ownership of operating rights to the fractional oil and gas interest not owned by the United States. Because the issue involved in both appeals is the same, we have consolidated the two cases.

The United States owned only a 50 percent mineral interest in each parcel. While the notices of available lands did not state that the offer must be accompanied by a statement of the offeror's ownership of operating rights not owned by the United States, 43 CFR 3130.4-4 clearly provides that an offer for a fractional noncompetitive lease "must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease."

[1] The Department has consistently ruled that failure to submit a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States mandates rejection of the offer. E.g., Jelenko Stefanovic, 26 IBLA 229 (1976); Michael Shearn, 24 IBLA 259 (1976); George H. Isbell, Jr., 20 IBLA 312 (1975). The same result obtains even when the United States offers 50 percent or more of the mineral interest. George H. Isbell, Jr., supra. Failure to comply with a mandatory requirement of the regulations necessitates rejection of the lease offers. Jelenko Stefanovic, supra. The offers were thus properly rejected.

We would like to address ourselves to two problems in this case which are interrelated. On appeal, appellants both contend that:

On the same simultaneous list which offered the above tract you offered Parcel No. 36 (Mississippi), a tract in which the Us owns only a 50% interest. Jesse L. Dally * * * was the successful drawee of this parcel, and a lease was subsequently issued to him, effective July 1, 1973, your number ES 11646. Mr. Dally's offer was not accompanied by a statement showing the extent of his ownership of the operating rights to the fractional interest not owned by the United States.

Appellants are correct in their contention. To understand what transpired it is necessary to examine actions taken in the Eastern States Office subsequent to the drawing.

Oil and gas lease offer ES 11646 embraced lands within the DeSoto National Forest. Pursuant to 43 CFR 3109.3-1, the lease

application was referred to the Forest Service, Department of Agriculture, to determine whether the Forest Service objected to issuance of a lease for the lands embraced in ES 11646. By letter of April 24, 1973, the Forest Service advised the Eastern States Office that it had no objection to issuance of the lease and found that lease issuance "would not constitute a major Federal action significantly affecting the quality of the environment." The lease subsequently issued on June 11, 1973.

The lands embraced by lease offers ES 11631 and ES 11632, on the other hand, involved mineral interests acquired by the Federal Farm Mortgage Corporation under the Act of January 31, 1934, 48 Stat. 344, repealed by the Act of October 4, 1961, 75 Stat. 773. These offers were transmitted to the Lake States Office, BLM, for preparation of an Environmental Analysis Record (EAR). On July 16, 1975, apparently after having done field work in preparation of the EAR, the Lake States Office returned the case files to the Eastern States Office, having determined that no EAR was needed for the issuance of fractional mineral leases when the surface is non-federal. Upon review of the lease offers in the Eastern States Office it was discovered that they did not contain the statement required by 43 CFR 3130.4-4, and the offers were rejected accordingly.

It was error for the Eastern States Office to accept lease offer ES 11646 in the absence of the statement required by 43 CFR 3130.4-4. But the fact that the Eastern States Office incorrectly accepted one lease offer does not vitiate the correctness of its actions in the cases presently on appeal. While it is regrettable that almost 3 years elapsed from the drawing of the offers to their rejection, the facts which we have set out above clearly show that there was no intentional preferential treatment accorded to the applicant for ES 11646.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

